IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

::::

O R D E R

Hem Raj Singh
Vs.
State of Rajasthan & Anr.

S.B. CIVIL WRIT PETITION NO.3308/2000
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 05th October, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Mukesh Vyas, Advocate for the petitioners.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The petitioner has challenged the order dated 05th August, 2000 passed by the respondents whereby he was retrenched from the service after making compliance of Section 25-F of the Industrial Disputes Act, 1947 (for short 'Act of 1947'). The sole ground on which the petitioner has challenged this order is that

the respondents have passed this order with reference to the provisions of Section 4 of the Rajasthan Regulation of Appointments to Public Service and Rationalization of Staff Act, 1999 (for short 'Act of 1999') whereas Section 9 and 11 of the said Act have been declared ultra virus of Article 14 and 16 of the Constitution of India.

Learned counsel has argued that while interpreting different provisions of an enactment, harmonious interpretation would have been made. When Sections 9 & 11 have been struck down as being unconstitutional, Section 4 of the Act of 1999 could not be invoked to remove the petitioner from service.

Learned counsel argued that while the petitioner has been removed from service, one Surendra Singh, who Junior to him has been regularized in service in the year 1997. no arguments however was made as to if the respondents have made any illegality in making compliance of Section 25-F of the Act of 1947.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that the respondents have retrenched the petitioner from service after making due compliance of Section 25-F of the Act of 1947. The petitioner has

been paid a sum of Rs.18,900/- towards notice pay and compensation as per the requirement of Section 25-F(a) read with Section 25-B of the Act. He has argued that the petitioner has also not disputed the fact with regard to the compliance of Section 25-F of the Act. It was denied that Surendra Singh was junior to the petitioner. In fact the petitioner was for the first time engaged as a casual labour in the year 1981 whereas Surendra Singh was initially appointed as casual labour in the year 1978. It was argued that the respondents were at liberty to retrench the petitioner by making compliance of Section 25-F of the Act of 1947 and compliance of Section 25-F of the Act of 1947 was not dependent on Section 4 of the Act of 1994. He therefore argued that the writ petition be dismissed.

I have heard Mr.Mukesh Vyas, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy. Government Advocate and perused the records.

So far as the reference of Section 4 of the Act of 1999 in the order of retrenchment is concerned, this is merely a acknowledgment of the fact that the Section 4 of the Act of 1999 has mentioned about the desirability of putting an end to the services of those engaged on daily/temporary basis. It can be however accepted that if reference to Section 4 (supra) was not

made, the respondents could not have independently pressed Section 25-F of the Act of 1947 into service. In other words they did not derive the right to retrench the petitioner from their service by virtue of Section 4. Even if there was no mention of Section 4 in the impugned order, the respondents could nonetheless invoke Section 25-F of the Act of 1947 to retrench the petitioner from service. It is for this reason that the declaration of Section 9 and 11 of the Act of 1999 as ultra virus would not make any difference to the validity of the order of retrenchment. Whether or not the order of retrenchment in the case of the petitioner has been validly passed shall have to be judged on the merits of the case. When the respondents have before making retrenchment of the petitioner complied with the provisions of Section 25-F read with Section 25-B of the Act of 1947 and paid to him the amount of notice pay together with the requisite amount of compensation, no fault can be found with the order of retrenchment. The arguments of the petitioner that his junior Surendra Singh was continued in service when he was retrenched is already liable to be rejected in view of the categorical denial of the respondents that the petitioner was senior to Surendra Singh. It has been asserted that Surendra Singh was initially appointed in the year 1978 whereas the petitioner initially engaged in the service in the year 1981. There has been no rebuttal of this fact as stated in para 7 of the reply

by filing any rejoinder. The petitioner has also not even denied the fact with regard to compliance of Section 25-F having been made by the respondents.

In the circumstances, I do not find any merit in the writ petition and the same is therefore dismissed. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-